IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 09-10-2007

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THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL ORIGINAL PETITION No.19158 OF 2007

1.M.Ravichandran
2.R.Sundari ... Petitioners

-vs-

1.The Inspector General of Police,
CBCID,
Chennai.

2.The State,
rep.by the Superintendent of Police,
Cuddalore District,
Cuddalore.

3.The Inspector of Police,
Chidambaram Taluk Police Station,
Chidambaram.

4.The Inspector of Police,
Annamalai Nagar Police Station,
Annamalai Nagar.

5.The Sub-Inspector of Police,
Killai Police Station,
Cuddalore District.

6.Jaishankar @ Shankar
7.Nagaraj ... Respondents

Petition under Section 482 of the Code of Criminal Procedure.
For petitioners : Mr.A.R.Suresh
For respondents : Mr.A.Saravanan,
1 to 5 Govt.Advocate (Crl.Side).

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O R D E R

This petition has been filed to direct the Inspector General of Police, CBCID, Chennai, first respondent herein, to take up the further

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investigation of the case in Crime No.13 of 2007 on the file of Sub-Inspector of Police, Killai Police Station, Cuddalore District, fifth respondent herein, in accordance with law.

2. Facts of the case go thus :

2.1. Petitioners are husband and wife. Father of first petitioner got two wives and first petitioner is the son through first wife, while sixth respondent and one Arumugham are the progeny through second wife. Bad- blood was existing between first petitioner and his step-brothers with regard to properties.

2.2. It was alleged that on 13.02.2007 at about 07.00 p.m., when the petitioners were in their house, Jaishankar and Arumugam gained entry into the house and asked first petitioner to remove his FIAT car to facilitate unloading blue metal for their building, for which the petitioner replied that he would do it sometime later, stating that the car was under repair. However, the duo shouted at the petitioners and picked up a quarrel. Then, seventh respondent Nagaraj and his son Anandraj also entered into the house and threatened the petitioners with dire consequences. Nagaraj was armed with Koduval.

2.3. In the melee, sixth respondent attempted to trample first petitioner, but, since second petitioner intervened, she received a kick by leg from sixth respondent. At that time, she was pregnant. Sixth respondent is reported to have hurled filthy language also at her. Neighbourers came, intervened and settled the dispute.

2.4. On 15.02.2007, since second petitioner was suffering from abdominal pain, petitioners met Dr.Amutha at Parangipettai, who prescribed some tablets. However, on 17.02.2007 also at about 11.00 a.m., as second petitioner was suffering from pain, they came to Government Hospital, Chidambaram, at about 01.30 p.m., by an auto, but, on the way, she delivered a child, but it was declared dead in the infirmary.

2.5. The above said allegations were set out in the complaint, lodged by first petitioner before Killai Police Station, which was registered in Crime No.13 of 2007, under Section 316 IPC.

3. During the course of investigation, the police, after examining the witnesses, inclusive of Dr.Amutha, and recording their statements under Section 161 Cr.P.C., learnt that sixth and seventh respondents were not culprits, but, in order to settle their score, the petitioners falsely utilised the death of foetus and implicated sixth and seventh respondents as if they gained entry into the house and trampled the petitioner.

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4. This Court called for Case Diary from the learned Government Advocate (Criminal Side) and, on its production, it was carefully scrutinised. It is seen that police have examined the de facto complainant as well as the witnesses. It also transpires that first petitioner, being proprietor of a medical shop, gave tablets to his wife, to terminate pregnancy, since she was already having a suckling baby, aged about eight months. Since the attempt got aborted by unwanted result, he used this circumstance to rope his step-brothers into the case and lodged the complaint belatedly.

5. In this context, it is to be noted that even though the occurrence is stated to have taken place on 13.02.2007 at about 07.00 p.m., the complainant, namely, first petitioner was keeping quiet till 17.02.2007 and only at 11.30 p.m. on that day, he lodged the complaint, after the death of foetus. None of the witnesses examined by the police supported the version in the First Information Report. On the other hand, they appear to have told that a brawl ensued between first petitioner and sixth respondent, which did not result in any exchange of blows, and, when the neighbourers intervened, they did not pursue further. In the post-mortem certificate, the cause of death was mentioned as, the foetus would have died due to non-viability and the approximate age of foetus was 22 to 24 weeks.

6. Pertinent it is to mention that post-mortem was conducted by two lady doctors of Chidambaram Government Hospital. Police examined Dr.Amutha, who gave a certificate and statement under Section 161 Cr.P.C. to the effect that on 15.02.2007 at about 11.30 a.m., she examined second petitioner; she had got eight month old baby under mother feeding with the history of progressive distension of lower abdomen since the birth of the child. By examining the scan, the doctor confirmed that second petitioner was 24 weeks pregnant and she referred her to higher scan centre to rule out any anomalies of the baby. The doctor further stated that the patient did not complain of any stomach pain nor did she prescribe any tablets for the same.

7. Wound Certificate of second petitioner shows that she was examined on 17.02.2007 and she stated that she was assaulted by a known person on 13.02.2007 at 07.00 p.m., at her home; the patient was conscious; foetus expelled outside; there were no external injuries; abdominal pain and bleeding per vagina present and that she was admitted to Government Hospital, Chidambaram. It was opined that she suffered simple injury.

8. After scrutinizing all the above said materials, the police altered the provisions of IPC and laid charge sheet under Sections 294,452,316,506 (ii), and 201 read with 316 and 34 IPC against the petitioners. The memo of evidence contains the names of sixth and seventh respondents also among other witnesses.

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9. Learned counsel for the petitioners would contend that first petitioner is the complainant to the incident, but he is arraigned as accused, which is not tenable, and that the investigation was carried out by the police in a slipshod manner. It is his further contention that there was nothing to show that first petitioner himself gave medicines to his wife, to terminate her pregnancy.

10. On the contrary, learned Government Advocate (Criminal Side) would submit that the police have investigated the case in a proper direction and, on the basis of the valid materials available in the case, they have arrayed the petitioners as accused and filed charge sheet.

11. Learned counsel for the petitioners draws attention of this Court to a decision of this Court in Madhu v. The Inspector of Police, CBCID, Chennai, 1998 (III) CTC 42, wherein it is held that even though the investigation was completed, the High Court has got every power to issue mandamus, directing the CBCID, to reinvestigate the case as per law.

12. In the above said case, the Government side had not produced the Case diary, Post-mortem Certificate and other connected records. However, the circumstances under which the investigation was transferred to CBCID by this Court should be taken into account.

13. Learned counsel for the petitioner also cited the following authorities of the Supreme Court, in support of his contention :

(i) Gudalure M.J.Cherian v. Union of India, 1992 M.L.J. (Cri) 508, wherein it was held as under :

> "Four accused persons have been arrested in connection with the crime and the trial against them is likely to commence. The investigation having been completed by the police and the charge-sheet submitted to the court, it is not for the Supreme Court, ordinarily, to reopen the investigation specially by entrusting the same to a specialised agency like C.B.I. The Court is also conscious that of late, the demand for C.B.I. investigation even in police cases is on the increase. Nevertheless in a given situation, to do justice between the parties and to instil confidence in the public mind, it may become necessary to ask the C.B.I. to investigate a crime. It only shows the efficiency and the independence of the agency..."

(ii) Punjab and Haryana High Court Bar Association v. State of Punjab, AIR 1994 SUPREME COURT 1023, in which it was observed as follows :

> "10. We are conscious that the investigation having been completed by the police and charge-sheet submitted to the court, it is not for this Court, ordinarily, to reopen the investigation. Nevertheless, in the facts and circumstances of the

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present case, to do complete justice in the matter and to instil confidence in the public mind, it is necessary, in our view, to have fresh investigation in this case through a specialised agency like the Central Bureau of Investigation (CBI)."

14. The principles laid down in the aforementioned decisions of the Apex Court are to the effect that even though the investigation was completed by the police and charge-sheet laid before the Court, considering the peculiar circumstances of the case, to do complete justice in the mater and to instil confidence in the mind of public, a fresh investigation may be ordered.

15. Law of the land is for a direction for reopening and reinvestigating a case with reference to its circumstances and that power shall be exercised sparingly, to instil confidence in the mind of the society.

16. As regards the question, whether such a direction could be issued in this case, the answer would be emphatically NO, the reason being, first and foremost, there is an unexplained delay in lodging the FIR. While the occurrence allegedly took place on 13.02.2007 at about 07.00 p.m, the complaint came to be lodged only on 17.02.2007 at 11.30 p.m. Neither in the F.I.R. nor in the statement of first petitioner under Section 161 Cr.P.C., he had furnished his explanation, for the delay. Nextly, the statement of Dr.Amutha goes to the effect that second petitioner did not complain of any stomach pain and she had not prescribed any medicines. It appears that second petitioner had gone to the lady doctor, to get clarification as regards progressive distension of lower abdomen since the birth of the child and the doctor confirmed at that time that second petitioner was pregnant by 24 weeks. Another reason is, the neighbourers themselves did not support the version of first petitioner. Had the occurrence been true, at least, some witnesses would have hinted about the same. Under the circumstances, it is very difficult to accede to the prayer of the petitioners.

17. The contention that first petitioner has made use of occasion of expulsion of foetus from second petitioner to falsely implicate sixth and seventh respondents in the case, in order to wreak vengeance, is tenable.

18. As far as the case on hand is concerned, this Court is having only prima facie materials, to reach a conclusion and the Courts below will not, in any way, be influenced by the observations made in this order. Courts may consider transfer or reopening of investigation or reinvestigation of a case even after filing of charge sheet only when it was done in an uncharitable manner, violating the procedures. If no foul

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play is smelt in the investigation, Courts would be left with no option except to reject the prayer for reinvestigation or transfer. In this case, no such irregularity is found. Hence, this petition is dismissed. Consequently, the connected Crl.M.P.Nos.1 and 2 of 2007 are also dismissed.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

To
1.The Inspector General of Police,
CBCID, Chennai.

2.The Superintendent of Police,
Cuddalore District, Cuddalore.

3.The Inspector of Police,
Chidambaram Taluk Police Station,
Chidambaram.

4.The Inspector of Police,
Annamalai Nagar Police Station,
Annamalai Nagar.

5.The Sub-Inspector of Police,
Killai Police Station,
Cuddalore District.

6.The Public Prosecutor,
High Court, Madras.
+ One cc to Mr. A.R. Suresh Advocates SR 62566
Scd (co)
sg 16/10/07

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